

ROSEBUD SIOUX TRIBE,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-115-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 20, 1994

Appellant Rosebud Sioux Tribe seeks review of an April 12, 1994, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a FY 1994 Planning grant. For the reasons discussed below, the Board affirms the Area Director's decision.

Notice of the availability of funding for the FY 1994 Planning grant program was published in the Federal Register on December 28, 1993, 58 FR 68702, 68704. On February 28, 1994, the last day for submission of applications, appellant submitted its application to the Rosebud Agency, BIA. The Superintendent found the application incomplete and returned it to appellant, making six recommendations for completing and clarifying it. Appellant resubmitted the completed application to the Agency on March 7, 1994. The Superintendent forwarded it to the Aberdeen Area Office, where it was reviewed and ranked by a panel of three reviewers.

On April 12, 1994, the Area Director informed appellant that its application had not been approved. The Area Director's letter stated that the application had received a score of 40 out of a possible 100 points and that it ranked last among the nine applications received. The Area Director stated further that, because of the limited funds available for the Planning grant program, only the top two applications could be fully funded and only the third and fourth ranking applications could be partially funded. He continued:

[Appellant] forwarded an application for planning based on the eligibility criteria factors of administration of "mature" contracts and no significant or material audit exceptions. [1/] Despite this, an attachment to the application refutes the tribe's

1/ Section C(2)(a) of the program announcement stated:

"To receive a planning grant a tribe must: * * * (ii) Have no significant or material audit exceptions noted in any and all current cost audits and/or the current OMB Circular A-128 organization-wide single audit report; [and] (iii) Administer mostly 'mature' contracts; i.e., those meeting the definitions of 'mature' as found in Public Law 93-638, as amended."

claim of administration of "mature" contracts and the auditor's letter cited problems, one of which was the failure to resolve questioned costs from the prior and current year audits. Recruitment and hiring of a qualified planner should be incidental to the goal, instead of the goal. The application lacked substance and contained no detail of tasks or benefits to be derived from the grant. The application would have been strengthened if it stated what goals would be accomplished, by whom, and when. The budget justification was too brief to show how costs were allocable, allowable and reasonable. The application did not include a management or self-monitoring plan.

(Area Director's Apr. 12, 1994, Decision at 2).

Appellant appealed this decision to the Board, contending: (1) the auditor's exceptions were inappropriate; (2) appellant does not use the designation "mature contract" but, instead, has consolidated its tribal government programs; and (3) the review process discriminated against appellant. 2/

Appellant states that it does not believe that it had audit problems or that it had failed to resolve questioned costs from prior or current audits. However, appellant's grant application included an independent auditor's report, which stated, inter alia: "[Q]uestioned costs from the prior and current year remain unresolved approximating \$109,000." The Area Director was entitled to rely on the independent auditor's report submitted by appellant in determining whether appellant had significant or material audit exceptions.

Appellant's application did not identify any of its P.L. 93-638 contracts as "mature." According to the Superintendent's March 4, 1994, letter returning appellant's incomplete application, appellant had not requested "mature" status for any of its contracts. Although appellant now contends, apparently, that its contracts are equivalent to mature contracts, it made no such showing in its application. Instead, it submitted only a list of its contracts and grants. The Board cannot consider information submitted for the first time on appeal. In a competitive grant program, all grant applicants must be given fair and equitable treatment. Therefore, the Board can consider only the information and supporting documents included with the original grant application. Chippewa Cree Tribe v. Acting Billings Area Director, 23 IBIA 129 (1992).

Appellant next contends that it was discriminated against in the review process. It presents absolutely no evidence in support of this contention. Appellant has failed to show that it was discriminated against.

2/ Appellant also filed a request for reconsideration with the Area Director. At that time, it requested certain information concerning the review of its application. In response to that request, the Area Director furnished appellant with, inter alia, copies of the reviewers' rating sheets for its application and a copy of the criteria used to evaluate the application.

In fact, it appears that appellant was the recipient of favorable treatment to which it was not entitled. Appellant submitted its incomplete application on the last day for submission of applications. Rather than rejecting it, or forwarding it to the Area Director in its incomplete state, the Superintendent returned it to appellant for completion, then accepted appellant's revised application after the deadline and forwarded it to the Area Office. ^{3/} The Area Office accepted the revised application and rated it. These actions violated the principles discussed in Cree Tribe and other Board decisions. See, e.g., Native Village of Shishmaref v. Acting Juneau Area Director, 26 IBIA 230 (1994); Baltimore American Indian Center v. Eastern Area Director, 26 IBIA 189 (1994), and cases cited therein. The Board has consistently held that, in a competitive grant program, BIA may not consider information submitted by a grant applicant after the closing date for submission of applications. Allowing an applicant to resubmit an incomplete application after the closing date gives that applicant two opportunities to submit an acceptable application and is therefore a violation of BIA's duty to provide fair and equitable treatment to all applicants. Although BIA erred in this regard, its error was in appellant's favor. Accordingly, appellant cannot claim relief on the basis of that error.

Appellant does not address the several other reasons given in the Area Director's decision for the low rating given to appellant's application. The Board finds that appellant has failed to show that the Area Director erred in denying its application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's April 12, 1994, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

^{3/} The Superintendent's Mar. 4, 1994, letter to appellant stated that the deadline for submission of applications was Mar. 7, 1994. This was incorrect. Both the Federal Register announcement and the Area Director's Jan. 6, 1994, letter to appellant concerning the grant program clearly stated that the deadline was Feb. 28, 1994.